

## AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 16, 2006

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: VAR-12318 - APPLICANT/OWNER: TMF INVESTMENTS, LLC, ET AL

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### **\*\* CONDITIONS \*\***

Staff recommends DENIAL. The Planning Commission (6-0 vote) recommends APPROVAL, subject to:

#### **Planning and Development**

1. Approval of and conformance to the Conditions of Approval for Rezoning (ZON-12312) and Site Development Plan Review (SDR-12316) shall be required.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.
3. The variance shall be for residential adjacency only.
4. The mezzanine level shall conform to Sections 501 and 505 of the 2003 International Building Code.

**\*\* STAFF REPORT \*\***

**APPLICATION REQUEST**

This is a request for a Variance to allow a Residential Adjacency setback of 20 feet where a 105-foot setback is the minimum setback required and to allow three stories where a maximum of two stories is allowed on 10.53 acres adjacent to the west side of Decatur Boulevard between Madre Mesa Drive and Roberta Lane. Companion applications for an amendment to the Southwest Sector Land Use Map of the Master Plan (GPA-12310), a Rezoning (ZON-12312), and a Site Development Plan Review (SDR-12316) have also been submitted.

**EXECUTIVE SUMMARY**

This item was held in abeyance from the 06/08/06 Planning Commission so that the applicant could consider possible changes to the apartment design. The applicant submitted revised plans that increased the setbacks from 20 feet to 25 feet along the western property line where the drainage easement exists. However the setbacks located south of Madre Mesa Drive remain at 20 feet. The setbacks along Roberta Lane have increased from 77 feet to 81 feet.

A mezzanine level within the proposed apartment buildings constitutes a third story, which is in violation of R-3 (Medium Density Residential) development standards. Additionally, the buildings as proposed are too close to existing single-family properties to meet Residential Adjacency Standards, regardless of the third story. Since the buildings could have been designed to conform to Zoning Code standards, the recommendation is for denial.

**BACKGROUND INFORMATION**

***A) Related Actions***

03/20/95      The Board of County Commissioners approved a request for a Rezoning (ZC-567-95) from R-E (Rural Estates Residential) and H-2 (General Highway Frontage) to R-3 (Multiple Family Residential) and C-1 (Local Business) for a portion of this site. The approval was in conjunction with a proposed 72-unit apartment complex, a 19,200 square-foot shopping center, and a 103,000 square-foot mini-warehouse complex. The development component of this approval was for three years.

07/17/96      The Board of County Commissioners approved a request for a Rezoning (ZC-798-96) to R-3 (Multiple Family Residential) for a proposed 20-unit apartment addition to the previously approved 72-unit apartment development on a portion of the subject site. The approval expired 07/07/98.

- 03/10/97      The City Council approved an Annexation (A-0013-95) of the portion of the subject site under Resolution of Intent to R-3 (Limited Multiple Residence) and C-1 (Local Business), containing approximately 11.10 acres. The Planning Commission and staff recommended approval.
- 06/08/98      The City Council approved an Extension of Time [ZC-567-95(1)] of an approved Rezoning to R-3 (Medium Density Residential) and C-1 (Limited Commercial) for a portion of the site. The Planning Commission and staff recommended approval. The Resolution of Intent was extended indefinitely.
- 06/28/99      The City Council approved a City-initiated General Plan Amendment (GPA-0011-99) to change the land use designation of a portion of the subject property from R (Rural Density Residential) and SC (Service Commercial) to M (Medium Density Residential) and SC (Service Commercial). This property included what is now a U.S. Post Office at the southwest corner of Decatur Boulevard and Madre Mesa Drive. The Planning Commission and staff recommended approval.
- 06/07/00      The City Council approved a General Plan Amendment (GPA-0005-00) to change the land use designation from M (Medium Density Residential) and SC (Service Commercial) to M (Medium Density Residential) and SC (Service Commercial) on 4.1 acres at the southwest corner of Decatur Boulevard and Madre Mesa Drive. The City Council also approved a Rezoning (Z-0013-00) to C-1 (Limited Commercial) and R-3 (Medium Density Residential) on approximately 6.9 acres at the southwest corner of Decatur Boulevard and Madre Mesa Drive in conjunction with a proposed U.S. Post Office and 72-unit apartment development. All previous Resolutions of Intent were expunged. The Planning Commission and staff recommended approval.
- 09/05/01      The City Council approved a Site Development Plan Review (SD-0025-01) for a proposed 85-lot single-family residential development on 13.02 acres adjacent to the south side of Madre Mesa Drive, approximately 840 feet east of Michael Way. The Planning Commission and staff recommended approval.
- 11/21/01      The City Council approved an Annexation (A-0030-01) of approximately 2.21 acres located on the south side of Madre Mesa Drive, approximately 700 feet west of Decatur Boulevard. The Planning Commission and staff recommended approval. The effective date was 11/30/01.
- 01/02/02      The City Council approved a General Plan Amendment (GPA-0024-01) to change the land use designation on the newly annexed property from R (Rural Density Residential) and ROW (Right-of-Way) to M (Medium Density Residential). The City Council also approved a Rezoning (Z-0051-01) from U (Undeveloped) [R (Rural Density Residential) Master Plan Designation] to R-3 (Medium Density

Residential) on the same 2.21-acre portion of the subject site. The Planning Commission and staff recommended approval.

- 01/16/02 The City Council approved a Site Development Plan Review [Z-0051-01(1), Z-0013-00(1) and ZC-567-95(2)] for a proposed 118-unit apartment development and a 59,180 square foot mini-warehouse facility on approximately 7.53 acres of the subject site (all but 2.5 acres of the current site). The Planning Commission and staff recommended approval. The City Council also approved a Variance (V-0086-01) to allow zero foot side and rear yard setbacks where 10 feet is the minimum side yard setback required and 20 feet is the minimum rear yard setback required on the multi-family portion of the project. The Planning Commission recommended approval. Staff recommended denial.
- 03/15/06 The City Council approved the Annexation (ANX-10266) of approximately 2.5 acres located at 4584 Madre Mesa Drive, which is part of the subject site. The Planning Commission and staff recommended approval. The effective date was 03/24/06.
- 04/19/06 The City Council approved a bill (Bill No. 2006-21) to amend Ordinance No. 5819 relating to an approved Annexation (ANX-10266) that would amend the legal description and change the appropriate City zoning classification from U (Undeveloped) [R (Rural Density Residential) Master Plan Designation] to R-E (Residence Estates) on the property at 4584 Madre Mesa Drive.
- 04/27/06 The Planning Commission held the following items in abeyance to the 06/08/06 Planning Commission meeting in an effort to allow the applicant time to meet with area residents and consider possible design changes: A General Plan Amendment (GPA-12310) to change the Master Plan Land Use on a 5.4-acre portion of the subject site from R (Rural Density Residential) and SC (Service Commercial) to M (Medium Density Residential); a Rezoning (ZON-12312) from U (Undeveloped) [R (Rural Density Residential) and M (Medium Density Residential) Master Plan Designations]; U (Undeveloped) [SC (Service Commercial) Master Plan Designation] under Resolution of Intent to C-1 (Limited Commercial); and R-E (Residence Estates) to R-3 (Medium Density Residential) on the subject site; a Variance (VAR-12318) to allow a 20-foot setback from protected properties where Residential Adjacency Standards require a 105-foot setback on the subject site and to allow three-story buildings where a maximum of two stories is allowed; and a Site Development Plan Review (SDR-12316) for a proposed 200-unit apartment project and a Waiver of perimeter landscape buffer requirements on the subject site.
- 07/13/06 The Planning Commission recommended approval of companion item SDR-12316 concurrently with this application.
- 07/13/06 The Planning Commission voted 6-0 to recommend APPROVAL (PC Agenda Item #17/dr).

***B) Pre-Application Meeting***

02/09/06 Staff reviewed Zoning Code requirements as they pertain to the proposed apartment project. Residential Adjacency Standards will apply. The applicant was advised to include a detailed parking analysis on the site plan.

***C) Neighborhood Meetings***

03/22/06 Eight neighborhood residents attended and had the following concerns and comments:

- Will the development consist of apartments or condominiums? The applicant responded that units will be apartments but will be built to condominium standards.
- What will the rent rates be? The rates will be \$800 – \$900 monthly.
- What does the zoning allow? R-3 zoning allows up to 24 units per acre; however, this project will be 18 units per acre.
- Residents don't want apartments; they would prefer condos.
- Residents stated that condo conversion is inevitable.

**DETAILS OF APPLICATION REQUEST**

***A) Site Area***

Gross Acres: 11.26  
Net Acres: 10.53

***B) Existing Land Use***

Subject Property: Single Family Residential  
Undeveloped  
North: Single Family Residential (Townhomes)  
Multi-Family Residential (Apartments)  
Public Drainage Easement  
South: Single Family Residential  
East: Post Office  
Multi-Family Residential (Apartments)  
West: Single Family Residential

***C) Planned Land Use***

Subject Property: R (Rural Density Residential)  
M (Medium Density Residential)  
SC (Service Commercial)  
North: MLA (Medium-Low Attached Density Residential)  
M (Medium Density Residential)

South: R (Rural Density Residential)  
M (Medium Density Residential)  
East: M (Medium Density Residential)  
West: R (Rural Density Residential)

**D) Existing Zoning**

Subject Property: R-E (Residence Estates)  
U (Undeveloped) [M (Medium Density Residential) Master Plan Designation]  
U (Undeveloped) [SC (Service Commercial) Master Plan Designation] under Resolution of Intent to C-1 (Limited Commercial)  
North: R-PD12 (Residential Planned Development - 12 Units per Acre)  
R-PD20 (Residential Planned Development - 20 Units per Acre)  
South: R-PD6 (Residential Planned Development - 6 Units per Acre)  
R-3 (Medium Density Residential)  
R-E (Rural Estates Residential - Clark County Designation)  
East: C-1 (Limited Commercial)  
C-M (Commercial/Industrial)  
West: R-PD6 (Residential Planned Development - 6 Units per Acre)

**E) General Plan Compliance**

The subject site is designated R (Rural Density Residential), M (Medium Density Residential), and SC (Service Commercial) on the Southwest Sector Map of the Master Plan. The R and SC designations are proposed to be changed to M by a companion Master Plan Amendment (GPA-12310). The Medium Density category allows residential densities up to 25.49 units per acre. The proposed Rezoning to R-3 (Medium Density Residential) will also allow up to 25.49 units per acre and therefore conforms to the M designation. The request for the Variance does not affect Master Plan policies.

<b>SPECIAL DISTRICTS/ZONES</b>	<b>Yes</b>	<b>No</b>
<b>Special Area Plan</b>		<b>X</b>
<b>Special Overlay District</b>	<b>X</b>	
Airport Overlay District	<b>X</b>	
<b>Trails</b>		<b>X</b>
<b>Rural Preservation Neighborhood</b>		<b>X</b>
<b>Development Impact Notification Assessment</b>		<b>X</b>
<b>Project of Regional Significance</b>		<b>X</b>

The North Las Vegas Airport Overlay Map indicates that this use is located in an area restricting the height of structures to 35 feet. According to Title 19, a separate Special Use Permit is required for any use in this area exceeding the 35-foot height limitation. The multi-family development proposed in connection with this request would not exceed 35 feet; therefore, no action is necessary on the part of the applicant.

Portions of unincorporated Clark County are included within the notification area.

The site is not located within the Rural Preservation Overlay District, either as a Rural Preservation Neighborhood or in the associated buffer area.

## ANALYSIS

### A) *Zoning Code Compliance*

#### A1) Development Standards

Pursuant to Title 19.08, the following Development Standards apply to the subject proposal:

Standards	Required R-3	Requested	Compliance
Min. Setbacks*			
• Front	20 Feet		Y
• Side	5 Feet		Y
• Corner	5 Feet		Y
• Rear	20 Feet		Y
Max. Building Height	2 Stories / 35 Feet	3 Stories / 35 Feet	N

\*The proposal meets the standards of the R-3 (Medium Density Residential) zoning district, with the exception of building height where adjacent to residential properties to the west and south. This is explained further in the Residential Adjacency section below. In addition, the R-3 (Medium Density Residential) District requires that building height not exceed the lesser of two stories or 35 feet. The proposed buildings do not exceed 35 feet, but they do contain three stories. A Variance (VAR-12318) has been submitted to allow the additional story and the reduced setback.

#### A2) Residential Adjacency Standards

Pursuant to Title 19.08, the following Residential Adjacency Standards apply to the subject proposal:

- a) Proximity slope. The maximum height of the apartment buildings adjacent to protected residential properties along the west and south property lines is 35 feet. The Proximity Slope limitation requires these buildings to be set back 105 feet from the residential property lines. These buildings are setback 20 feet from properties in the Madre Mesa South subdivision to the west and 77 feet from properties on the south side of Roberta Lane. A Variance (VAR-12318) to allow the reduced setback will be required. Buildings along



the north side of the project comply with Adjacency requirements. The amount of deviation is 81 percent along the west perimeter and 27 percent along the south perimeter.

This item was held in abeyance from the 06/08/06 Planning Commission so that the applicant could consider possible changes to the apartment design. The applicant submitted revised plans that increased the setbacks from 20 feet to 25 feet along the western property line where the drainage easement exists. However the setbacks located south of Madre Mesa Drive remain at 20 feet. The setbacks along Roberta Lane have increased from 77 feet to 81 feet.

- b) Building setback. The apartment buildings must be set back a minimum of 15 feet to meet this requirement, which equals the rear yard setback of the protected properties. The 20-foot setback complies with this standard.

#### ***B) General Analysis and Discussion***

The variances requested are related to the height of the multi-family residential buildings proposed adjacent to existing single-family development along the western and southern perimeter of the subject site. The buildings on most of the site do not conform to R-3 (Medium Density Residential) height standards because they contain a mezzanine level that is considered by Title 19 to be a third story. Those buildings along the west and south property lines, regardless of the number of stories, are too close to single-family properties to meet Residential Adjacency standards. The buildings could have been designed as single-story in the same configuration; therefore, staff recommends denial.

This item was held in abeyance from the 06/08/06 Planning Commission so that the applicant could consider possible changes to the apartment design. The applicant submitted revised plans that increased the setbacks from 20 feet to 25 feet along the western property line. The setbacks along Roberta Lane remain at 20 feet.

#### **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”



Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by designing three-story buildings that do not meet height and Residential Adjacency standards. Redesigning the buildings as 15-foot single-story buildings or moving the proposed buildings further away from existing residential property lines would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

#### **PLANNING COMMISSION ACTION**

The Planning Commission added conditions 3 & 4 to which the applicant agreed.

#### **NEIGHBORHOOD ASSOCIATIONS NOTIFIED**

2

#### **ASSEMBLY DISTRICT**

1

#### **SENATE DISTRICT**

4

#### **NOTICES MAILED**

524 by City Clerk

#### **APPROVALS**

0

#### **PROTESTS**

3